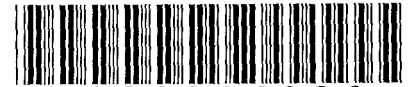


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Attorneys for Arizona Water Company

**BEFORE THE ARIZONA CORPORATION COMMISSION**

IN THE MATTER OF THE  
APPLICATION OF ARIZONA WATER  
COMPANY, AN ARIZONA  
CORPORATION, FOR ADJUSTMENTS  
TO ITS RATES AND CHARGES FOR  
UTILITY SERVICE FURNISHED BY  
ITS WESTERN GROUP AND FOR  
CERTAIN RELATED APPROVALS.

Docket No. W-01445A-04-0650

**ARIZONA WATER COMPANY'S RESPONSE  
TO STAFF'S MOTION TO REQUIRE  
SUPPLEMENTAL SUFFICIENCY INFORMATION,  
OR IN THE ALTERNATIVE, TO SUSPEND THE  
RATE CASE TIME CLOCK**

Arizona Corporation Commission

**DOCKETED**

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1 Arizona Water Company ("Arizona Water" or "the Company") hereby responds to  
2 the Motion to Require Supplemental Sufficiency Information, or in the Alternative, to  
3 Suspend the Rate Case Time Clock ("Sufficiency Motion") filed by the Utilities Division  
4 ("Staff") of the Arizona Corporation Commission ("the Commission"). For the reasons  
5 set forth below, the Sufficiency Motion is frivolous and should be summarily denied. In  
6 fact, if Staff's argument were accepted by the Commission, the Commission would  
7 necessarily have to hold that it has violated the Arizona Administrative Procedure Act  
8 ("APA"), A.R.S. § 41-1001, *et seq.*, by formulating and adopting a rule that implements  
9 agency policy without any prior notice or public participation. Arizona Water does not  
10 believe the Commission has acted in the unlawful manner suggested by Staff's argument,  
11 and urges the Commission to summarily deny Staff's motion.

12 In the Sufficiency Motion, Staff has requested three alternative forms of relief:

13 (1) That the Company be ordered to submit inverted block rate  
14 designs for each of its Western Group water systems as a condition to  
15 sufficiency under A.A.C. R14-2-103; or

16 (2) That all deadlines imposed under A.A.C. R14-2-103 be  
17 extended indefinitely until the Company submits such inverted block rate  
18 designs; or

19 (3) That the Company be ordered to file an inverted block rate  
20 design for each Western Group water system 45 days following the date  
21 on which the Company's rate application is found sufficient.

22 Boiled down, Staff is actually seeking to shift Staff's investigative obligation to Arizona  
23 Water, depriving Arizona Water of its right to present its case to the Commission and to  
24 obtain a decision based on evidence and argument rather than Staff's dictates. *See State*  
25 *ex rel. Corbin v. Ariz. Corp. Comm'n*, 143 Ariz. 219, 223-24, 693 P.2d 362, 366-67 (App.  
26 1984) (describing the "fundamental procedural requirements" applicable to Commission  
proceedings to ensure that due process is afforded to the parties). Staff's attempt to force

1 Arizona Water to advocate a position that the Company disagrees with offends  
2 fundamental notions of due process.

3 Arizona Water recommends, assuming the Commission genuinely desires to adopt  
4 a general policy regarding water conservation and the use of inverted block rates by water  
5 utilities, that the Commission initiate a rule-making proceeding or otherwise open a  
6 generic docket to formally consider such policy. A proposed policy on inverted block  
7 rates (discussed below) is available on the Commission's official website. That proposed  
8 policy could serve as the starting point for the development of a formal amendment to the  
9 Commission's rules. By proceeding in this fashion, the Commission would receive the  
10 benefit of evidence and comments from the regulated water utilities and other affected  
11 parties, allow for full and fair consideration of all points of view on this topic, and ensure  
12 that all regulated water utilities have notice of the proposed policy.

13 A. Overview of Arizona Water's Rate Application and the Sufficiency  
14 Motion.

15 On September 8, 2004, Arizona Water filed an application for adjustments to its  
16 rates and charges for utility service furnished by its Western Group systems, which  
17 include five water systems serving approximately 20,000 customers. Arizona Water is  
18 requesting an increase in Western Group revenues equal to approximately \$2.6 million,  
19 an increase of approximately 25%. The current rates and charges for utility service for  
20 the Western Group systems were approved by the Commission in Decision No. 58120  
21 (Dec. 23, 1992), and thus have been in effect for nearly 12 years.

22 In support of its application, Arizona Water carefully followed the Commission's  
23 rule defining the filing requirements necessary to support a request by a public service  
24 corporation doing business in Arizona for increased rates or charges for service, codified  
25 at A.A.C. R14-2-103 (hereinafter "Rule 103"). Rule 103 has been in effect for many  
26 years. The current version of this rule was adopted by the Commission in Decision No.

1 57875 (May 18, 1992), following notice to the regulated water utilities, a hearing before  
2 the Commission and a further opportunity for the submission of written comments.  
3 Decision No. 57875 at 1-2 (summarizing Commission rule-making proceedings). In  
4 preparing the instant application, Arizona Water relied on and adhered to all the  
5 requirements set forth in Rule 103, just as it did in each of its prior rate applications.

6 In the Sufficiency Motion, Staff does *not* contend that Arizona Water's rate  
7 application violates or is otherwise inconsistent with the requirements set forth in Rule  
8 103. See A.A.C. R14-2-103(B)(7) ("the staff will review each filing to ascertain whether  
9 it is in compliance with the provisions of [Rule 103], including the instructions contained  
10 in subsection (B)(9) or in forms prescribed by the Commission."). Instead, Staff asserts  
11 that the Commission adopted a new unwritten "policy" under which all water utilities  
12 must submit an "inverted block rate design." In the Sufficiency Motion, however, Staff  
13 has not set forth this new policy because it is unwritten, and has instead argued that  
14 because inverted block rates were approved in other cases and a Commissioner made a  
15 statement during a hearing on another water utility's rate application, a new "policy" was  
16 adopted sometime in the recent past. That stretches the facts too far. Indeed, if the  
17 Commission has adopted a previously undisclosed and unwritten "policy," as argued by  
18 Staff, then the Commission has violated Arizona law.

19 **B. If Staff's Argument Is Accepted, the Commission's Policy Violates**  
20 **Arizona Law and Is Invalid and Unenforceable.**

21 In the APA, the term "agency" is broadly defined and includes "any board,  
22 *commission*, department, officer or other administrative unit of this state, including the  
23 agency head and one or more members of the agency head or agency employees or other  
24 persons directly or indirectly purporting to act on behalf or under the authority of the  
25 agency head, whether *created under the Constitution of Arizona* or by enactment of the  
26

1 legislature.” A.R.S. § 41-1001(1) (emphasis supplied).<sup>1</sup> Thus, the Commission is an  
2 “agency” under this definition.

3 As an agency, the Commission is subject to the requirements set forth in the APA,  
4 which, in the case of the Commission, have been imposed pursuant to the Legislature’s  
5 constitutional power to “prescribe rules and regulations to govern proceedings instituted  
6 by and before” the Commission. Ariz. Const. art. 15, § 6. Cf. *State ex rel. Corbin v.*  
7 *Ariz. Corp. Comm’n*, 174 Ariz. 216, 218-19, 848 P.2d 301, 303-04 (App. 1993) (holding  
8 that while the Legislature has the power to enact rules of practice and procedure to  
9 govern proceedings before the Commission, it may not enact laws giving the executive  
10 branch the power to review the substance of rules that relate to ratemaking).

11 Under the APA, the term “rule” is defined as “an agency statement of general  
12 applicability that implements, interprets or prescribes law or policy, or describes a  
13 procedure or practice requirement of an agency.” A.R.S. § 41-1001(17). Although Staff  
14 refers to the alleged requirement that water utilities must submit an inverted block rate  
15 design when seeking rate adjustments as a “policy,” it is apparent from Staff’s argument  
16 that this purported “policy” would constitute a proposed rule.<sup>2</sup>

17 Article 3 of the APA, A.R.S. § 41-1021 through 41-1036, contains a number of  
18 mandatory procedural requirements governing rulemaking by state agencies that are

19  
20 <sup>1</sup> Notably, this definition is broad enough to include, for example, the Utilities Division and its  
21 Director to the extent that the Utilities Division and the Director “purport[] to exercise authority  
subject to this chapter.” *Id.* Thus, if the new “policy” is actually the product of the Utilities  
Division, then the discussion that follows would apply to the Utilities Division.

22 <sup>2</sup> The APA also defines the term “substantive policy statement,” which includes “a written  
23 expression which informs the general public of an agency’s current approach to, or opinion of . .  
24 . [an] administrative rule or regulation, . . . including, where appropriate, the agency’s current  
25 practice, procedure or method of action based upon that approach or opinion.” A.R.S. § 41-  
26 1001(20). However, the new purported policy described in the Sufficiency Motion does not  
meet this definition because, first, it is not in writing and, moreover, a substantive policy  
statement “does not impose additional requirements or penalties on regulated parties.” *Id.* As  
interpreted by Staff, the Commission’s new policy clearly does impose additional requirements  
on Arizona Water and other regulated water utilities and is therefore a rule.

1 applicable to the Commission. Among other things, in connection with adopting a new  
2 rule, each agency must establish and maintain a public rulemaking docket that allows the  
3 public, including the regulated community, to be aware of the subject matter of all  
4 proposed rules and their current status. A.R.S. § 41-1021. Prior to adopting a new rule  
5 or amending or repealing an existing rule, each agency must file a notice of the proposed  
6 action with the Secretary of State, which is then published in the Arizona Administrative  
7 Register. A.R.S. § 41-1022(A) & (B). In addition, the agency must afford persons the  
8 opportunity to submit written statements, arguments, data and views on any proposed rule  
9 prior to its adoption. A.R.S. § 41-1023. Each agency is required to consider the impact  
10 that a proposed new rule or an amendment to an existing rule may have on small  
11 businesses as part of the rulemaking process. A.R.S. § 41-1035. Finally, absent certain  
12 limited circumstances, a new agency rule becomes effective 60 days after a certified  
13 original and 2 copies of the rule have been filed in the Secretary of State's office. A.R.S.  
14 §§ 41-1031 and 1032. In the event that an agency fails to substantially comply with these  
15 procedural requirements, the rule is invalid as a matter of law. A.R.S. § 41-1030(A).

16 Here there is no evidence that the Commission complied with any of the  
17 requirements set forth in the APA in adopting its purported new "policy" on inverted  
18 block rates. Assuming, *arguendo*, that the Commission has such a policy, the  
19 Commission has violated numerous Arizona statutes governing agency rule-making, and  
20 the policy is invalid and unenforceable. Further, such a policy would violate the  
21 "Regulatory Bill of Rights," enacted by the Legislature "[t]o ensure fair and open  
22 regulation by state agencies." A.R.S. § 41-1001.01(A). Accordingly, the Sufficiency  
23 Motion is groundless and should be summarily denied.

24 **C. Staff's Demand Is Inconsistent With the Basic Purpose of Rule 103.**

25 Putting aside the unlawful premise on which Staff's motion is predicated, Staff's  
26 argument is inconsistent with Rule 103. Rule 103 establishes the filing requirements that

1 a utility must meet in submitting a rate application. *See* A.A.C. R14-2-103(A)(1) (“The  
2 purpose of [Rule 103] is to define the specific financial and statistical information  
3 required to be filed . . . with regard to proposed increased rates or charges.”). On its face,  
4 Rule 103 does *not* require a utility to submit a particular type of rate design and certainly  
5 not a rate design the utility itself opposes. To Arizona Water’s knowledge, no rate  
6 application has ever been rejected on sufficiency grounds because a utility failed to  
7 submit a particular type of rate design, and no examples are cited in the Sufficiency  
8 Motion. Instead, to the extent there is a disagreement over the appropriate rate design,  
9 that disagreement is litigated during the course of the rate case and ultimately decided by  
10 the Commission based on the administrative record.

11 Ironically, when the Commission considered amendments to Rule 103 during the  
12 1991-1992 time period, which culminated in the adoption of the “time clock” deadlines to  
13 “improve the efficiency of, and *provide greater predictability* in, the rate review process”  
14 (Decision No. 57875 at 3 (emphasis supplied)), one of the primary concerns expressed by  
15 the regulated utilities was that Staff would abuse its power during the sufficiency review  
16 process. For example, the Commission specifically found that “[i]t would be  
17 fundamentally unfair to grant Staff *any decision-making authority* over the legally  
18 established time periods and the rights of the other parties.” Decision No. 57875,  
19 Attachment B (Concise Explanatory Statement) at 26 (emphasis supplied). The  
20 Sufficiency Motion, in which Staff has asserted the existence of a purported new agency  
21 “policy” that is not found in Rule 103 or, for that matter, in any other Commission rule or  
22 decision, is precisely the sort of arbitrary and overzealous action anticipated by the  
23 regulated utilities in their comments on the proposed amendments to Rule 103.

24 During the Commission’s rule-making, several utilities expressed concern that  
25 Staff would attempt to unilaterally impose additional requirements that are not clearly set  
26 forth in Rule 103 in order to delay or even reject a utility’s rate application – the very

1 scenario presented in this case. The Commission specifically considered and rejected  
2 those contentions, explaining as follows:

3 Issue: With the sufficiency of a utility's filing gaining  
4 such importance as the trigger for the time clock, Citizens  
5 requests that the complete filing requirements be specifically  
6 identified or incorporated by reference in the new rule.  
7 Tucson Electric Power Company (TEP) also seeks  
8 clarification of the filing requirements with which the  
9 utilities must comply. *Staff believes that the sufficiency of a  
10 general rate application is adequately defined in both the  
11 present and proposed rule.*

12 Evaluation: A.A.C. R14-2-103(B)(7) already requires  
13 that a utility's filing comply with the Commission's  
14 requirements and, *to the Commission's knowledge, no  
15 confusion or uncertainty exists as to what the current  
16 requirements entail.* Since the proposed amendments are *not*  
17 changing the substance of those filing requirements, we are  
18 not persuaded that a clarification is in fact needed. However,  
19 as discussed below, the Commission will in the future  
20 evaluate the operation of the amended rule and can consider  
21 at that time whether any problems have arisen with the scope  
22 of the filing requirements.

23 Decision No. 57875, Attachment B (Concise Explanatory Statement) at 14-15 (emphasis  
24 supplied).

25 To Arizona Water's knowledge, since Decision No. 57875 was issued in 1992, the  
26 Commission has never amended the filing requirements set forth in Rule 103. Therefore,  
those filing requirements should be the same today as they were in 1992, when Staff  
represented that "the sufficiency of a general rate application is adequately defined" in  
the rule. Staff's attempt to modify the requirement set forth in Rule 103 in the  
Sufficiency Motion plainly conflicts with both the letter and spirit of Rule 103. If  
granted, the Commission would effectively hold that new filing requirements may be  
invented by Staff during the sufficiency review process and used as an excuse to delay a  
utility's rate filing. This is not the sort of open and transparent process envisioned by the  
Commission when it amended Rule 103 in Decision No. 57875.



1           **D.   There Are No Prior Decisions Supporting the Sufficiency Motion.**

2           Staff contends that the Commission “has ordered inverted block rates in all recent  
3 water rate orders,” but fails to specifically identify any of those orders except for the  
4 order entered in Arizona Water’s most recent rate case. Because these orders have not  
5 been disclosed, Arizona Water cannot evaluate whether the orders actually support  
6 Staff’s contention that the Commission has adopted a new policy requiring water utilities  
7 to include inverted block rate designs in all rate applications. In fact, in AWC’s most  
8 recent Northern Group rate case, the Commission rejected the Staff’s inverted rate design  
9 proposal.

10           The only formal written Commission statement on inverted block rates of which  
11 Arizona Water is aware is found on the Commission’s official website. That *proposed*  
12 policy provides as follows:

13           Pricing/rate design is the Commission’s primary means of  
14 encouraging conservation. The Commission can do this by  
15 implementing inverted block rates, i.e., tiered rates. Tiered  
16 rates may not be appropriate in all circumstances. Staff will  
17 consider the appropriateness of an inverted three-tiered  
18 commodity rate structure for all water company rate cases,  
19 and if appropriate, will recommend such a tiered rate  
20 structure to encourage conservation. The tiers should be  
21 designed in a manner that customers who conserve will  
22 recognize cost savings, while high water users will pay a  
23 greater portion of the costs that increased usage places on the  
24 water system. Criteria for evaluating the appropriateness  
25 and/or type of tiered rate structure on a case-by-case basis  
26 shall include, but not be limited to, the following:

1.     Number of service connections on the system.
2.     Number of high usage customers on the system.
3.     Gallons of average water usage per connection per month.
4.     Gallons of median water usage per connection per month.
5.     Source of supply.

1 Proposed Policy for Water System Tiered Rate Design, [www.cc.state.az.us/working/wt-](http://www.cc.state.az.us/working/wt-attachC.htm)  
2 [attachC.htm](http://www.cc.state.az.us/working/wt-attachC.htm) (visited September 21, 2004; copy attached). This proposed policy, which  
3 has been posted on the Commission's official website for some four years, conflicts with  
4 Staff's position in the Sufficiency Motion in two significant ways.

5 First, the proposed policy recognizes that inverted block rates "may not be  
6 appropriate in all circumstances." Instead, the proposed policy states that various criteria  
7 will be evaluated during a rate case to determine, on a case-by-case basis, whether  
8 inverted block rates are appropriate.<sup>3</sup> Therefore, in some rate cases, it may be appropriate  
9 to adopt some form of inverted block rate design, while in others such rate design may  
10 not be appropriate. This is a decision that must be made during the course of the rate  
11 case based on the utility's particular characteristics and evidence presented by the parties.  
12 It is *not* made as part of the sufficiency review process under Rule 103.

13 Second, the proposed policy posted on the Commission's website states that *Staff*  
14 is the party that will evaluate the appropriateness of an inverted block rate structure, and  
15 is crystal-clear on this point: "Staff will consider the appropriateness of an inverted  
16 three-tier commodity rate structure for all water company rate cases, and if appropriate,  
17 will recommend such a tiered rate structure to encourage conservation." Thus, the  
18 proposed policy properly recognizes that it is *Staff's* job to investigate and, where  
19 appropriate, recommended an inverted block rate structure. Again, there is no suggestion  
20 that an inverted block rate design must accompany every rate application.

21 Arizona Water's experience in its two recent rate cases for its Northern Group and  
22 Eastern Group systems is also inconsistent with Staff's position in the Sufficiency  
23 Motion. As a preliminary matter, it should be noted that Arizona Water has had a very

24 <sup>3</sup> Arizona Water has no objection to providing Staff with the information identified in the  
25 Commission policy. However, providing information to Staff is obviously much different than  
26 compelling Arizona Water to design and file an entirely different type of rate structure which it  
does not support and one which the Staff itself has previously admitted will have little or no  
effect on how much water customers use.

1 simple rate design for many years, which includes a monthly minimum charge based on  
2 meter size rather than the type of customer receiving service and a single commodity rate  
3 for all gallons sold. This rate design is easy for customers to understand, simple to  
4 administer and produces predictable revenues. In addition, this rate design encourages  
5 conservation because customers must pay the full cost of service for each 1,000 gallons  
6 they use. *See American Water Works Association, Alternative Rates, 22-26 (1992)* (“the  
7 primary objectives in instituting uniform volume rates are that the single price per unit is  
8 readily understood by the consumer and at the same time, conveys the message that  
9 additional water consumption is equally as expensive as initial volumes of water.”).

10 In Arizona Water’s most recent Northern Group rate case, Docket No. W-01445A-  
11 00-0962 (application filed November 22, 2000), Arizona Water proposed to continue the  
12 use of its long-standing rate design. Staff, in contrast, recommended the use of an  
13 inverted block rate design. In its direct filing, Staff contended that its rate design would  
14 result in water conservation. *See Direct Testimony of Crystal Brown at 27.* However,  
15 Staff’s witness subsequently testified that *there is no evidence that Staff’s inverted block*  
16 *rate design would actually reduce consumption.* Surrebuttal Testimony of Crystal Brown  
17 (“the Company will not experience any significant decrease in customer usage”); Hearing  
18 Transcript at 347 (Staff is not recommending inverted tier rates in order to encourage  
19 conservation from customers) and 348 (Staff does not have any evidence that inverted  
20 tier rates will actually impact customer water use). Based on Staff’s frank admission that  
21 it has no evidence that inverted tier rates actually impact customer usage or reduce  
22 consumption, the Commission rejected Staff’s inverted block rate design, and did not  
23 suggest any other tiered rate design is necessary. Decision No. 64282 at 22.

24 In Arizona Water’s Eastern Group rate case, Docket No. W-01445A-02-0619  
25 (application filed August 14, 2002), Staff again proposed the use of an inverted block rate  
26 design. However, in that case, Staff did not attempt to justify its proposed rate design on

1 the basis of water conservation. Instead, Staff's rate design was based on an entirely  
2 different concept: marginal cost pricing. According to Staff's rate design witness, "Staff  
3 applied the marginal cost pricing approach . . . to inject a forward-looking cost of service  
4 approach to rate design." Surrebuttal Testimony of John Thornton at 1. Mr. Thornton  
5 also testified that water is "price inelastic," and that "water use changes little with a three-  
6 tiered rate design." Direct Testimony of John Thornton at 6. Ultimately, the  
7 Commission again rejected Staff's recommendation. Decision No. 66849 (March 19,  
8 2004) at 26. Unfortunately, the Commission went on to approve a completely different  
9 type of inverted block rate design, which was not advocated by any party, with virtually  
10 no explanation of the basis for that rate design and with no evidence in the record to  
11 support it. *Id.* at 26-27. That rate design was essentially bolted on to the end of the  
12 section dealing with rate design with no discussion or analysis to guide future decision-  
13 making. *Compare* Sufficiency Motion at 2 ("Creating a successful inverted block rate  
14 proposal takes a great deal of time and attention.").

15 Based on Arizona Water's recent experience, and taking into account the proposed  
16 policy that is posted on the Commission's official website, it is obvious that the  
17 Commission has not actually adopted a policy requiring all water utilities to propose  
18 inverted block rate designs in seeking rate adjustments.

19 In short, a more accurate summary of the Commission's current, purported,  
20 unwritten "policy" would appear to be that inverted block rate designs may or may not be  
21 appropriate, depending on the water utility's particular characteristics, and Staff should  
22 be the party responsible for investigating whether such a rate design should be proposed.  
23 Beyond that, it is difficult to say what position the Commission might take in the future,  
24 particularly given the Staff's admitted lack of evidence that inverted block rate structures  
25 actually result in decreased water use.

26

1           **E. Staff's Request to Extend the Deadline for the Submission of Its Direct**  
2           **Case Is Unsupported and Premature.**

3           In addition to arguing that Arizona Water should be made to file a second rate  
4           design proposal, a design with which Arizona Water disagrees, Staff contends that it  
5           should be allowed additional time to prepare its direct case. Specifically, "Staff requests  
6           that the rate case time clock be extended until such time as Arizona Water files" an  
7           inverted block rate design. Sufficiency Motion at 3. In other words, Staff requests that  
8           the deadline for the submission of its direct case be extended *indefinitely* because the  
9           Company refused to comply with Staff's unlawful and arbitrary demand – a request that  
10          is obviously punitive in nature.<sup>4</sup>

11          The basis for Staff's unprecedented request is "**Arizona Water's action in**  
12          **completely ignoring recent Commission policy concerning inverted block rates,**"  
13          which Staff characterizes as an "extraordinary situation." Sufficiency Motion at 3. *See*  
14          A.A.C. 14-2-103(B)(11)(e)(ii) (emphasis supplied). For the reasons set forth above,  
15          however, Staff's attempt to characterize this situation as an "extraordinary event" is  
16          groundless. Staff's argument assumes the existence of an unwritten policy that modifies  
17          the filing requirements set forth in Rule 103. Such a policy simply does not exist. But if  
18          it does exist, it would have been adopted in violation of Arizona law and, therefore, be  
19          invalid and unenforceable. Moreover, such an unwritten policy conflicts with the  
20          proposed policy that is publicly available on the Commission's website, and is not  
21          supported by or ordered in the Commission's decisions in Arizona Water's two most  
22          recent rate cases. Put bluntly, the so-called unwritten "policy" appears to be something  
23          that Staff has manufactured out of whole cloth to unreasonably delay this case and deny  
24          Arizona Water a timely hearing of its application.

25          <sup>4</sup> For example, during a conference call between Staff and Arizona Water representatives, it was  
26          stated that if the Company refused to file an inverted block rate design, Staff would bring this  
        matter before the Commissioners in order to "embarrass" the Company.

1       The bottom line is that once Arizona Water's rate application is found sufficient,  
2 Staff will have 180 days to investigate and evaluate Arizona Water's application and to  
3 prepare its own recommendations on rate design. Arizona Water submits that 180 days is  
4 ample time for Staff to consider the appropriateness of an inverted block rate design,  
5 based on the particular circumstances in this case. It is important to keep in mind that  
6 180-day time period available to Staff in this case is the same time period that Staff  
7 would have to investigate any other Class A utility's rate application, including Arizona  
8 Public Service Company, Qwest and Southwest Gas Corporation. In Decision No.  
9 57875, the Commission specifically determined that 180 days would be ample time for  
10 Staff to evaluate and prepare recommendations in rate cases filed by Arizona utilities  
11 substantially larger than Arizona Water's Western Group systems. Decision No. 57875,  
12 Attachment B (Concise Explanatory Statement) at 21. Staff has provided no legitimate  
13 reason to believe that the 180-day period will be insufficient to allow Staff to do its job in  
14 this case, particularly given that Staff proposed inverted block rate designs in Arizona  
15 Water's Northern Group and Eastern Group rate cases without needing additional time.<sup>5</sup>

16       **F. Conclusion and Relief Requested.**

17       For the reasons set forth above, the Sufficiency Motion is groundless and should  
18 be summarily denied. Staff's argument is necessarily premised on the adoption of a  
19 purported unwritten "policy" that imposes new filing requirements on water utilities  
20 without completing any of the notice-and-comment procedures mandated by the  
21 Legislature in the APA. Therefore, if Staff's argument is accepted, the Commission has  
22 violated Arizona law and the purported policy is invalid and unenforceable.

23 \_\_\_\_\_  
24 <sup>5</sup> Staff also claims that events during the recent Arizona-American Water Company rate hearing  
25 support extending the 180-day deadline. However, as Staff acknowledges, the events that  
26 occurred in that rate case may actually have been unusual: the utility submitted an inverted  
block rate design *after* the evidentiary hearing. Sufficiency Motion at 3-4. Arizona Water  
avows that it will *not* attempt to submit an inverted block rate design after the close of the  
hearing in this case.

1 Ignoring Staff's flawed premise, there is still no legitimate basis for Staff's  
2 position. The filing requirements that must be satisfied in connection with the utility's  
3 application for increased rates for charges for service are expressly set forth in Rule 103.  
4 Staff cannot concoct new filing requirements and announce them to the utility *after* its  
5 application has been filed, as Staff has done in this case. Nor is Staff's position  
6 supported by Arizona Water's two most recent rate cases, in which Staff's own witness  
7 testified that an inverted block rate design would do little to encourage water  
8 conservation. The most telling indication of the Commission's current "policy"  
9 regarding the appropriateness of inverted tier rate design is the proposed policy that has  
10 been posted on the Commission's official website, which explains that *Staff* will be  
11 responsible for investigating and, if appropriate, recommending an inverted block rate  
12 design on a case-by-case basis.

13 In short, there is simply no legitimate ground for compelling Arizona Water to  
14 present a rate design either "as a condition of sufficiency" or "45 days following the date  
15 on which the Company's rate application is found sufficient," with which it disagrees, or  
16 to indefinitely delay the prosecution of Arizona Water's Western Group rate case in  
17 derogation of Arizona Water's fundamental right to rates that will provide an opportunity  
18 for Arizona Water to earn a fair and reasonable return on its utility property.

19 The Company urges the Commission to open a generic docket concerning  
20 statewide water conservation policy to fully and carefully consider all possible tools,  
21 including rate design where that might be appropriate. Piecemeal consideration of this  
22 issue, as the Staff's motion requests, is poor public policy and deprives utilities of their  
23 right to notice of, and participation in, the decision-making process.

1 RESPECTFULLY SUBMITTED this 1<sup>st</sup> day of October, 2004.

2 FENNEMORE CRAIG

3  
4 By 

5 Norman D. James  
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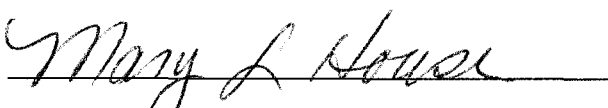
12 An original and 13 copies of the  
13 foregoing were delivered this 1<sup>st</sup> day of  
14 October, 2004 to:

15 Docketing Supervisor  
16 Docket Control  
17 Arizona Corporation Commission  
18 1200 West Washington  
19 Phoenix, AZ 85007

20 A copy of the foregoing was hand-delivered  
21 this 1<sup>st</sup> day of October, 2004 to:

22 Teena Wolfe, Esq.  
23 Administrative Law Judge  
24 Hearing Division  
25 Arizona Corporation Commission  
26 1200 West Washington  
Phoenix, AZ 85007

Timothy Sabo, Esq.  
Lisa VandenBerg, Esq.  
Legal Division  
Arizona Corporation Commission  
1200 West Washington  
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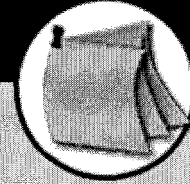
23  
24 By: 

25 PHX/NJAMES/1591442.1/12001.189

26



Arizona Corporation Commission

**WORKING GROUP REPORTS****Attachment C****Proposed Policy For Water System Tiered Rate Design**

Pricing/rate design is the Commission's primary means of encouraging conservation. The Commission can do this by implementing inverted block rates, i.e., tiered rates. Tiered rates may not be appropriate in all circumstances. Staff will consider the appropriateness of an inverted three-tiered commodity rate structure for all water company rate cases, and if appropriate, will recommend such a tiered rate structure to encourage conservation. The tiers should be designed in a manner that customers who conserve will recognize cost savings, while high water users will pay a greater portion of the costs that increased usage places on the water system. Criteria for evaluating the appropriateness and/or type of tiered rate structure on a case-by-case basis shall include, but not be limited to, the following:

1. Number of service connections on the system.
2. Number of high usage customers on the system.
3. Gallons of average water usage per connection per month.
4. Gallons of median water usage per connection per month.
5. Source of supply.

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